

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

CIV 03-1291 MV/KBM
CR 02-544 MV

JORGE CASTRO,

Defendant-Movant.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court on Jorge Castro's motion seeking habeas relief under 28 U.S.C. § 2255. Having considered the arguments, pleadings, relevant law, and being otherwise fully advised, I find the petition without merit and recommend it be denied with prejudice.

Because it is possible to resolve the issues on the pleadings, and the record establishes conclusively that movant is not entitled to relief, I find that an evidentiary hearing is not necessary. *E.g.*, § 2255; Rule 8(a), *Rules Governing Habeas Corpus Under Section 2255*; *Trice v. Ward*, 196 F.3d 1151, 1159 (10th Cir. 1999), *cert. denied*, 531 U.S. 835 (2000).

Castro claims that his attorney was ineffective because he failed to conduct discovery that would have established his entitlement to a reduction of sentence under the "safety valve" provision. *Doc. 1*. In a separate motion filed in the criminal matter but not filed here, he renewed his request for discovery even though the Honorable Martha Vázquez previously denied the same motion. *See United States v. Castro*, CR 02-544 MV (*Doc. 74*); *see also id.* (*Docs. 71, 68*).

Judge Vázquez halted the sentencing hearing to give Castro the opportunity to qualify for

the provision, and thereafter held an evidentiary hearing to determine whether he was entitled to it. She found he was not. In support of his claim, Castro points to no evidence that would entitle him to the reduction and merely reiterates the same kind of evidence that Judge Vázquez already considered. He therefore fails to establish either deficient conduct or prejudice under *Strickland v. Washington*, 466 U.S. 688 (1984).

Wherefore,

IT IS HEREBY RECOMMENDED that the § 2255 petition (*Doc. 1*) be denied and also that his motion for discovery again be denied (*Doc. 74* in CR 02-544).

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the ten-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**


UNITED STATES MAGISTRATE JUDGE